IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 4 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KASAM ABU BHOKAL

Versus

STATE OF GUJARAT

Appearance:

MR. P.M. THAKKAR, SR. ADVOCATE WITH MR BD KARIA for Petitioner

MR. A.J. DESAI, APP for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 14/03/2001

C.A.V. JUDGEMENT

1. Kasam Abu Bhokal-petitioner original accused has filed this criminal revision application under Section 397, 407(2) read with Section 482 of the Criminal Procedure Code, 1973 (hereinafter referred to as `the

Cr.P.C.') for quashing and setting aside the judgement and order dated 26.12.2000 passed by the learned Sessions Judge, Jamnagar in transfer application being Criminal Misc. Application No. 712 of 2000. The learned judge was pleased to reject the transfer application of the petitioner for transfer of his case from the Court of learned Judicial Magistrate First Class, Jam Khambhalia Kalyanpur to any other court having jurisdiction and grant the transfer of the petitioner as prayed for.

2. The facts giving rise to this application are as under:

2.1 The petitioner is one of the accused amongst other in respect of C.R. No. I - 45 of 1992 of Jam Khambhalia Police Station for the offences punishable under Sections 302, 306, 395, 396, 147, 148, 149, 333, 332, 186, 224 and 255 of the Indian Penal Code and Section 135 of the Bombay Police Act and Section 3(a) of the Prevention of Damages of Public Properties Act and Section 4 of TADA Act. The petitioner is accused person in respect of C.R. No. II - 117 of 2000 of Jam Khambhalia Police Station for the offence under Section 25(1) of the Arms Act and he was arrested on 27.11. 2000.

2.2 In this case a remand application was made in respect of the aforesaid C.R. No. II - 117 of 2000 which was granted remanding the accused till 4.12.2000. Thereafter, further remand was sought. The learned Judicial Magistrate First Class granted remand upto 7.12.2000. Thereafter, by an application dated 7.12.2000 the petitioner was sought to be treated as arrested in respect of C.R. No. I-45 of 1992 of Jam Khambhalia Police Station. The learned Judicial Magistrate First Class, Jam Khambhalia granted the said application. The police remand was also sought by separate application on the very day i.e. on 7.12.2000 for 14 days in respect of the aforesaid C.R. No. I - 45 of 1992.

2.3 At that stage the petitioner orally complained to the learned Judicial Magistrate First Class that he was treated with third decree by the police. The learned Judicial Magistrate First Class by his order dated 7.12.2000 directed that the accused be medically examined and the remand application was kept for hearing on 18.12.2000 or any other earlier date if he is medically fit.

2.4 From the record it appears that the Medical Officer, Guru Govindsingh Hospital, Jamnagar, informed

learned Judicial Magistrate by his communication dated 9.12.2000 that the accused is now examined by the hospital and report is submitted. The said report is received by the Judicial Magistrate First Class on 9.12.2000. In view of the same, the Judicial Magistrate First Class issued a notice dated 11.12.2000 advancing the hearing of the date on 14.12.2000 instead of 18.12.2000 thereby he had preponed the hearing of the application. At that time the accused gave an application for adjourning the matter. The learned A.P.P. had objected to adjournment of the matter. The learned Judicial Magistrate First Class decline to grant time to the advocate. He therefore rejected the adjournment application and insisted on hearing of remand application of the prosecution.

2.5 The learned advocate for the petitioner thereafter made an application dated 14.12.2000 requesting the learned Judicial Magistrate First Class to stay the proceedings so as to enable the petitioner to approach the higher forum against the order refusing adjournment. The learned Judicial Magistrate First Class also rejected the said application.

2.6 the learned advocate for the petitioner thereafter requested the court to get the statement of the accused recorded in the investigation of C.R. No. 117 of 2000 as the statement of the accused was necessary and desirable to be produced for the purpose of inquiry as to the remand as asked for by the prosecution was necessary. The learned Judicial Magistrate First Class, Kalyanpur, by his order dated 14.12.2000 rejected the said application.

2.7 The petitioner-accused thereafter submitted an application dated 14.12.2000 and sought time for filing revision application in the Sessions Court against the aforesaid order. He however rejected the said application.

2.8 The petitioner accused thereafter submitted an application dated 14.12.2000 apprehending that he was not likely to get justice from the court and as such intended to make a transfer application and sought stay of the proceedings. The learned Judicial Magistrate First Class by his order dated 14.12.2000 allowed the application partly and stayed the proceedings till 19.12.2000.

2.9 The petitioner thereafter filed transfer application being Criminal Misc. Application No. 712 of 2000 in the Sessions Court at Jamnagar for transfer of

the case.

2.10 The learned Sessions Judge by his order dated 26.12.2000 was pleased to reject the transfer application. However, the learned Judge has granted stay of the execution of his order rejecting the transfer application till 5.1.2000.

3. Being aggrieved and dissatisfied with the aforesaid order, the petitioner has filed the present application before this court somewhere in January 2001. When this matter reached hearing on 5.1.2001, this court had extended stay which was granted by the trial court till 11.1.2001. Thereafter, the matter was heard on 25.1.2001 when the court passed the following order:

"Rule returnable on 6th February, 2001. Service of rule is waived by Shri A.J. Desai, learned APP for the State. Meanwhile, case registered before Jam Khambhalia Police Station being C.R. No. I 45 of 1992 along with Criminal Misc. Application No. 712 of 2000 of the Sessions Court, Jamnagar, be called for so as to reach this court on or before 5th February, 2001. In this case Kasam Abu Bhokal - original accused has filed an application for transfer of his case from the court of learned Judicial Magistrate , First Class, Jam Khambhalia-Kalyanpur to any other court, therefore, the learned J.M.F.C. Kalyanpur (Shri P.M. Champaneri) may also send his report before this court so as to reach by 5th February, 2001. Meanwhile, stay of the proceedings granted by trial court may be continued till 8th February, 2001."

4. Thereafter, again this court on 6.2.2001 passed the following order:

"In this matter, I have already directed the learned Judicial Magistrate First Class, Jam Khambhalia-Kalyanpur (Shri P.M. Champaneri) to send his report before this court so as to reach by 5th February, 2001 and also directed to send the record. It appears that the record has come, but the report of the learned Judicial Magistrate First Class has not come.

In view of the same, the learned Judicial Magistrate First Class is requested to send his report by 26th February, 2001. The matter is adjourned to 27th February, 2001. The stay may be

extended till then."

5. Thereafter, the matter was heard on 1.3.2001. In this case this court (Coram: K.M. Mehta, J) on 1.3.2001 had passed order and in the operative order it was stated as under:

"The learned Magistrate is also requested to send his report by special messenger so as to reach this court on or before 5th March, 2001. The order of this court be sent to the learned Magistrate by fax. S.O. to 7th March, 2001. The stay granted earlier is extended till 9.3.2001."

5.1 After the said order, I have received report from the Civil Judge (J.D.) and J.M.F.C. Jam - Kambhalia - Kalyanpur dated 2.3.2001. This report has been shown to both the learned Additional Public Prosecutor Mr. A.J. Desai as well as learned senior advocate Mr. P.M. Thakkar.

5.2 Learned senior advocate Mr. P.M. Thakkar thereafter submitted that in this case the charge-sheet has already been filed on 4.3.2001 before the Sessions Judge being case No. 34 of 2001. So nothing survives and therefore the matter can be disposed of in accordance with law.

5.3 Mr. A.J. Desai, learned APP, has submitted that in this case the petitioner is an accused person in respect of serious offences referred to above. The remand application filed by the prosecution is started from 7.12.2000 till today. So the learned Magistrate, Jam-Khambalia and/or the Sessions Judge, Jamnagar, will decide the said remand application in accordance with law after hearing both the parties.

6. In view of the facts and circumstances which I have set out earlier, the learned Judicial Magistrate, First Class, Jam Khambalia-Kalyanpur and/or the Sessions Court Jamnagar will consider all the aspects and will consider the application made by the prosecution in this behalf in accordance with law. The petition stands disposed of accordingly.

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